



STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

MARVIN L. SCHURKE, Executive Director

112 Henry Street N.E., Suite 300 • Post Office Box 40919 • Olympia, Washington 98504-0919
(360) 570-7300 • Fax (360) 570-7334 • E-mail filings: filing@perc.wa.gov • Website: www.perc.wa.gov

**RULES FOCUS GROUP
MEETING NOTES
November 17, 2005**

| | | |
|---------------|------------------|------------------------------------|
| Participants: | Glenn Frye | Washington State University |
| | Joe Olson | OFM/Labor Relations Office |
| | David Levin | King County Labor Relations Office |
| | Dave Fleming | Public School Employees |
| | Gladys Burbank | WFSE |
| | Michael Wilmore | WFSE |
| | Herb Harris | WPEA |
| | Marv Schurke | PERC |
| | Ken Latsch | PERC |
| | Karl Nagel | PERC |
| | Dario de la Rosa | PERC |

Our discussions were based on the outline of issues document, as updated November 9, 2005. We had an opening discussion about our process and several participants (particularly Joe Olson and Gladys Burbank) mentioned that they needed to have further discussions with their respective principals before they could make final recommendations about any specific rules language. Marv acknowledged that concern, but stated that some issues (particularly rules for factfinding under the PSRA) needed to be in place before the next round of bargaining starts in the summer of 2006.

We discussed a number of issues (as detailed below), but did not get through all of the rule sections listed in the Outline of Issues document. We then had a closing discussion about our process and scheduled two more meetings to finish our work. Please mark your calendars for those additional meetings, as follows:

Thursday, December 15, 2005

Time: 9:00 a.m. to 12:00 noon

Place: PERC Office

112 Henry Street NE, Suite 300
Olympia WA



Tuesday, January 17, 2006

Time: To be determined

Place: PERC Office

112 Henry Street NE, Suite 300
Olympia WA

We discussed the following issues at our November 17 meeting:

WAC 391-08-120 Other than mentioning the use of "Word" rather than "Word Perfect", nothing else was added on this rule.

WAC 391-08-230 We did not spend much time on this repealed rule that formerly regulated summary judgments, other than noting that PERC now handles summary judgment motions under the standard APA process in WAC 10-08-135. The participants were assured that PERC looks at pre-hearing settlement procedures as they are requested by litigants in a particular case.

WAC 391-08-300 We did not have detailed discussion of subpoenas and discovery at the meeting, but there was a general impression that it would be best to leave the existing rule in place without change.

WAC 391-08-640 Dave Fleming was concerned that the suggested language on amicus briefs could cut off the ability to raise issues in an amicus brief. David Levin supported the suggested language as a good approach, so that amicus briefs do not change factual arguments already made by the primary litigants.

Gladys Burbank mentioned that WFSE may propose language dealing with the "interim" nature of certain orders in representation cases.

With the explanation offered in the outline of issues document, Gladys Burbank stated the WFSE would not pursue mentioning "reconsideration" in the PERC rules.

WAC 391-08-820 There was substantial discussion about whether exact percentages of showings of interest should be disclosed to parties or the public. PERC has not disclosed that information in the past, and the NLRB changed its procedures to document showing of interest verifications on a pass/fail basis only. This was brought up because of a public information request from a private organization, while both employer and union participants in the focus group saw risks as well as benefits. Marv stated that the agency staff would look at conforming PERC practice to current NLRB practice.

- WAC 391-25-051 Marv restated the intention to correct the statutory references in this rule, and invited verification of the sections listed. Joe Olson stated that the listed sections appeared to be appropriate, but that he would check on them.
- WAC 391-25-076 Marv restated that this is a "housekeeping" repeal now that all "E" cases transferred from the Department of Personnel have been closed. There was no objection.
- WAC 391-25-110 There was an extensive discussion on "showing of interest" matters.
- There was no desire for PERC to specify the language to be used in authorization cards, but Herb Harris mentioned the difficulties sometimes encountered with "dual purpose" cards and questioned whether single-purpose cards should be required. Dave Fleming noted that PERC has dealt with ambiguous cards in the past, and further noted that the NLRB tries to expedite elections and sort out "card issues" at a later time.
- Marv explained the further research discloses the NLRB "continuous campaign" precedents discussed in a previous focus group is extremely vague and limited. There appeared to be agreement to leave such issues for case-by-case decisions.
- WAC 391-25-140 Four different "options" developed as a result of discussion at the previous meeting were discussed.
- David Levin and Joe Olson supported Option 2, which would terminate the "status quo" and "shutdown of bargaining" effects of this rule upon issuance of a dismissal order.
- Dave Fleming noted that severance groups could not hold up bargaining for the entire group, because the Commission has ruled that only the "severance group" should be disabled from bargaining. The rest of the historical unit can continue to negotiate.
- There was no agreement on an approach to take, and the issue will be discussed again.
- WAC 391-25-430 The participants agreed that the rule on eligibility cut-off dates should be amended as set forth in the November 9 document.
- WAC 391-25-436 There was a substantial discussion concerning the "campaigning on the employer's premises" topic. The November 9 document contained two alternatives, one limited to state employees (per language in the PSRA) and one attempting to capture NLRB precedents allowing employee campaigning during free time such as during breaks and at meal periods.

Joe Olson stated that the state is generally opposed to any rule that would allow union campaigning on the employer's premises during work hours.

Gladys Burbank described the DOP practice of setting campaign groundrules on a case-by-case basis.

This will be an issue for further discussion.